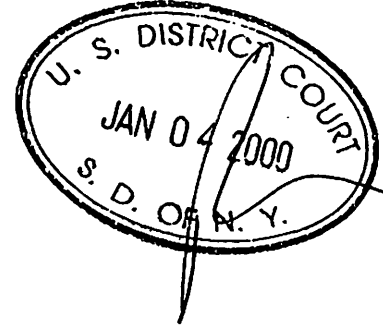


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**UNITED STATES DISTRICT COURT**  
**SOUTHERN DISTRICT OF NEW YORK**

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**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff,**

**v.**

**GOLF EMPORIUM CORPORATION AND**  
**FREDERICK TROPEANO,**

**Defendants.**

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**99 Civ. 10259 (JSR)**

**AMENDED**  
**COMPLAINT**

Plaintiff Securities and Exchange Commission ("Commission"), for its Complaint against defendants Golf Emporium Corporation ("Golf") and Frederick Tropeano ("Tropeano") (collectively "Defendants"), alleges as follows:

1. Since at least January 1, 1998, Golf and Golf's president and chief executive officer, Tropeano, have obtained at least \$4,860,642 by selling Golf common stock to at least 193 -- mostly elderly -- investors in a purported private placement. Golf, through Tropeano and Golf salespeople acting at Tropeano's direction, told prospective investors that investors who purchase Golf common stock in the "private placement" will -- after an imminent initial public offering ("IPO") of Golf stock -- be able to sell that stock for many times what they

paid for it. Golf salespeople also misrepresented to investors that Golf representatives had met with the Commission's staff to discuss the Golf IPO and that Golf planned to list its common stock on the New York Stock Exchange ("NYSE") or the National Association of Securities Dealers Automated Quotation ("NASDAQ") system. Defendants also distributed to investors a private placement memorandum for Golf's common stock ("PPM") that contained material misrepresentations concerning (a) Golf's assets; (b) Tropeano's educational credentials and work history; (c) the agreement of certain golf professionals to serve on Golf's advisory board; and (d) the amount of money that would be paid to Tropeano. The Commission brought this action to stop this fraudulent scheme.

2. Unless they are temporarily restrained, and preliminarily and permanently enjoined, the Defendants will continue to engage in the transactions, acts, practices, or courses of business alleged herein, and in transactions, acts, practices, or courses of business of a similar type and object.

### VIOLATIONS

3. Golf and Tropeano, directly or indirectly, singly or in concert, have engaged, are engaging, and are about to engage in, and, unless enjoined and restrained, will continue to engage, in transactions, acts, practices, or courses of business that constitute violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77q(a), and Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5.

## JURISDICTION AND VENUE

4. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act, 15 U.S.C. § 77t(b), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), seeking to temporarily restrain and preliminarily and permanently enjoin Defendants from future violations of the antifraud provisions of the federal securities laws. The Commission also seeks a final judgment ordering the Defendants to disgorge any ill-gotten gains plus prejudgment interest. The Commission also brings this action pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), for a final judgment ordering the Defendants to pay civil penalties. The Commission also seeks other relief during the pendency of this action, including: (a) an order freezing the Defendants' assets; (b) an order requiring an accounting from each of the Defendants, (c) an order providing for expedited discovery and prohibiting the destruction of documents; and (d) an order prohibiting Defendants from accepting and/or depositing investor funds.

5. This Court has jurisdiction over this action, and venue is proper, pursuant to Sections 20(d) and 22(a) of the Securities Act, 15 U.S.C. §§ 77t(d), 77v(a), and Sections 21(d), 21(e), and 27 of the Exchange Act, 15 U.S.C. §§ 78u(d), 78u(e), and 78aa.

6. Defendants, directly or indirectly, singly or in concert, made, and are making, use of the means or instruments of transportation or communication in, and the means or instrumentalities of, interstate commerce, or the mails, or of the facility of a national securities exchange, in connection with the transactions, acts, practices, or courses of business alleged

herein. Certain of the transactions, acts, practices, or courses of business alleged herein took place within the Southern District of New York, including, but not limited to, use of mails and telephones to communicate with investors in connection with Defendants' fraudulent scheme and the use of addresses in the Southern District of New York to receive investor checks.

#### **THE DEFENDANTS**

7. Golf is a New York corporation with offices in Florida and New York City. In its PPM, Golf describes itself as planning to sell and market golf instructional and training products, and golf accessories. Golf securities have never been registered with the Commission.

8. Tropeano is 33 years old and lives in Brooklyn, New York. Tropeano is Golf's president and chief executive officer.

#### **THE DEFENDANTS' FRAUDULENT SCHEME**

9. Since at least January 1998, Golf and Tropeano, directly, and indirectly through Golf salespeople acting under Tropeano's direction, have been inducing investors to invest in the Golf "private placement" by making material oral misrepresentations about Golf, including, but not limited to: (a) that Golf was about to commence an IPO that would cause the price of Golf stock to increase to many times the \$2 per share "private placement" price; (b) that Golf had meetings with the Commission's staff about the Golf IPO and about listing Golf stock on the NYSE or NASDAQ; and (c) that Golf had registered the IPO with the Commission. These oral statements are false and misleading, because there was no reasonable basis for the price predictions made to prospective investors, the meetings with the

Commission's staff described by Golf sales people never happened, and Golf stock has never been registered with the Commission.

10. Defendants generally provided investors with a copy of the PPM. The PPM contained material misrepresentations concerning (a) Golf's assets; (b) Tropeano's educational credentials and work history; (c) the agreement of certain golf professionals to serve on Golf's advisory board; and (d) the amount of money that would be paid to Tropeano.

11. Since at least January 1998, Golf salespeople have been cold calling prospective investors to induce the investors to purchase Golf common stock for \$2 per share in a purported private placement. To date, at least 193 -- mostly elderly -- investors from across the country have invested an aggregate of at least \$4,860,642 in the Golf "private placement", only \$35,000 of which has been refunded by Golf.

12. The Defendants' fraudulent scheme was ongoing at the time this action was filed. Prospective investors were solicited to buy Golf stock at least as recently as September 17, 1999, and Defendants sold Golf stock at least as recently as September 14, 1999.

#### **MISREPRESENTATIONS TO INVESTORS**

13. Golf and Tropeano, directly, and indirectly through Golf's salespeople under Tropeano's direction, represented to prospective investors that Golf would conduct an IPO of its stock and that following the IPO purchasers in the "private placement" would be able to sell their stock at a significant profit. For example:

- (a) In or about January 1998, William D. Munch of Florida was contacted by a Golf salesperson who told Munch that Golf planned an IPO of Golf common stock by the end of 1998, and that the Golf IPO would cause the price of Golf common stock to

increase three to four times the \$2 per share private placement price. In a subsequent conversation, the salesperson told Munch that Munch would receive a minimum return of 300 percent on his Golf investment. On or about February 11, 1998, Munch purchased 5,000 shares of Golf common stock for \$10,000.

(b) In or about January 1998, Richard Matula of Louisiana was contacted by a Golf salesperson who told Matula that Golf was planning an IPO of Golf common stock on September 15, 1998, and that on the first day of trading, Golf common stock would trade at a minimum of \$8 per share. On or about July 13, 1998, Matula purchased 500 shares of Golf common stock for \$1000.

(c) In or about November 1998, a Golf salesperson called Ulric Presta, Sr. of California, who is 83 years old, and told Presta that Golf planned to have an IPO of its common stock in January 1999, and that Golf expected its shares to trade at \$13 per share. From November 18, 1998 through December 29, 1998, Presta purchased 12,500 shares of Golf common stock for \$25,000.

(d) In or about November 1998, 76 year old Herman Logsdon of Ohio was called by a Golf salesperson who assured Logsdon that there was no chance of Logsdon losing his investment in Golf, because Golf was planning an IPO in the Fall of 1999 and that the IPO price for Golf common stock was expected to be between \$8 and \$9 per share. Between November 12, 1998 and January 4, 1999, Logsdon paid \$4,000 for Golf common stock at between \$1 and \$2 per share.

(e) In or about December 1998, 77 year old Horace Sheriff of South Carolina was contacted by a Golf salesperson who told Sheriff that within two months of Sheriff's

investment, Sheriff could expect to receive dividend checks from Golf and that Sheriff's shares of Golf common stock would be worth between \$30 and \$35 per share. In February 1999, Sheriff purchased 2,500 shares of Golf common stock at \$2 per share.

(f) In January 1999, a Golf salesperson called 84 year old Michael Colonnese of Texas and induced Colonnese to purchase 1,250 shares of Golf common stock for \$2,500. The salesperson told Colonnese that Golf was planning an IPO of Golf common stock in February 1999 at a guaranteed price of \$9 per share. One week later, the salesperson called Colonnese and persuaded him to send Golf another \$7,500 by falsely claiming that Colonnese had agreed to purchase 5,000 shares of Golf common stock for \$10,000, not 1,250 shares at \$2,500. In or about February 1999, the salesperson sold Colonnese an additional 5,000 shares of Golf common stock for \$5,000.

14. There was no reasonable basis in fact for the representations by Golf salespeople to prospective investors concerning the price of Golf stock following a purportedly planned IPO, as alleged in Paragraph 13 a-f, above. Accordingly, those representations were false or misleading.

15. Golf and Tropeano, directly, and indirectly through Golf's salespeople, misrepresented to prospective investors that Golf had consulted with the Commission concerning a Golf IPO and that Golf planned to list Golf stock on the NASDAQ or the NYSE.

For example:

(a) In or about January 1998, a Golf salesperson told Richard Matula that the Commission was aware of Golf's planned IPO and that Golf needed to raise enough

funds in the “private placement” to prove to the Commission that Golf had sufficient capital to list its stock on the NASDAQ.

(b) In early 1999, a Golf salesperson told Ulric Presta, Sr., that Golf had recently attended a two-day meeting with the Commission’s staff, which approved Golf’s IPO price of \$18 per share of common stock.

(c) On or about May 4, 1999, a Golf salesperson called 71 year old Lonnie Phillips and told Phillips that Golf planned to list Golf stock on the NYSE.

16. The representations by Golf salespeople to prospective investors, alleged in Paragraph 15 above, are false or misleading, because the meetings they described to prospective investors did not in fact occur and Golf had no plan to list its stock on the NYSE.

17. On or about June 17, 1999, Tropeano personally told an investor that Golf had registered its IPO with the Commission. This statement was false and misleading, because Golf common stock has never been registered with the Commission.

18. The PPM distributed by Defendants to prospective investors contained material misstatements. For example:

(a) The PPM states that as of February 28, 1999, Golf had assets totaling \$2,135,000, consisting of \$148,000 in cash, \$87,000 in accounts receivable, and \$1,900,000 in inventory. This statement is false or misleading, because Golf’s assets totaled no more than \$647,000 as of February 28, 1998.

(b) The PPM states that Tropeano attended New York University (“NYU”) and Syracuse University (“Syracuse”), and that Tropeano was the Senior Vice President of 1<sup>st</sup> Optimum Capital (“1<sup>st</sup> Optimum”), a broker-dealer and NASD member firm. These



statements are false or misleading, because Tropeano never attended NYU or Syracuse, and never worked at 1<sup>st</sup> Optimum.

(c) The PPM states that golf professionals Brad Faxon, Andy North, Jim Dent, Rick Bradshaw and Julie Inkster “have all agreed to serve on the Company’s advisory board.” This statement is false or misleading, because none of these individuals agreed to serve on Golf’s advisory board.

(d) The PPM states that Tropeano would “take no salary, but will be entitled to receive reimbursement for his out of pocket expenses up to a maximum of \$1,500 per month.” The PPM further states that if Golf’s revenues exceeded \$3,000,000 for the period ending March 31, 1999 that Tropeano would be entitled to a \$75,000 annual salary. These statements are false or misleading, because Tropeano, in fact, received in excess of \$1,130,000 during the purported private placement of Golf common stock.

19. The misrepresentations alleged in Paragraphs 13 through 18 above were and are material.

20. Defendants knew, or were or are reckless in not knowing, that the material misrepresentations alleged in Paragraphs 13 through 18 above were false or misleading.

## CLAIM FOR RELIEF

### **Violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act, and Rule 10b-5 -- Fraud in Connection with the Offer and Sale of Golf Common Stock**

21. The Commission realleges and incorporates by reference the allegations contained in Paragraphs 1 through 20 above.

22. Defendants, directly or indirectly, singly or in concert, in the offer or sale, or in connection with the purchase or sale, of securities by use of the means or instruments of transportation or communication in, or the means or instrumentalities of, interstate commerce, or of the mails: (a) have been employing, and are about to employ, devices, schemes and artifices to defraud; (b) have been obtaining, and are about to obtain, money or property by means of, or otherwise have been making, and are about to make, untrue statements of material fact or omissions to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) have been engaging, and are about to engage, in transactions, acts, practices, or courses of business which operated, are operating, and will operate as a fraud or deceit upon purchasers of Golf securities or other persons.

23. As part of and in furtherance of this conduct, as alleged in Paragraphs 13 through 18 above, the Defendants, knowingly or recklessly, directly or indirectly, have been making baseless price predictions and other material misrepresentations or omissions to induce prospective investors to purchase Golf common stock.

24. By reason of the foregoing, Defendants, directly or indirectly, singly or in concert, have violated, are violating, are about to violate, and, unless temporarily, preliminarily,

and permanently restrained and enjoined, will continue to violate Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a)(1), Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully requests that this Court:

A. Grant a temporary restraining order and an injunction, preliminarily during the pendency of this action and permanently thereafter, restraining and enjoining the Defendants from violating, directly or indirectly, Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a), and Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5.

B. Issue a Final Judgment requiring Defendants to disgorge their ill-gotten gains plus prejudgment interest on that amount.

C. Issue a Final Judgment assessing civil penalties against each Defendant pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), and Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d).

D. Grant an order freezing Defendants' assets *pendente lite*.

E. Grant an order directing Defendants to file with this Court and serve upon the Commission verified accountings of each's assets.

F. Grant an order permitting expedited discovery in this action.

G. Grant an order prohibiting the Defendants from destroying, altering, deleting or concealing documents.

H. Grant an order prohibiting Defendants from accepting and/or depositing investor funds.

I. Grant such other and further relief as this Court shall deem just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, hereby demands a trial by jury for all issues so triable.

Dated: December 27, 1999  
New York, New York

Respectfully Submitted,

*Carmen J. Lawrence by Edwin H. Nordlinger*  
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